In the High Court of Judicature at Madras

Dated : 03.9.2018

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The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Tax Case No.134 of 2018

The State of Tamil Nadu, rep.by
Joint Commissioner (CT), Chennai
(Central) Division, Chennai-8.. ...Petitioner

Vs

Tvl.Lloyds Insulations India Ltd.,
Chennai-104. ...Respondent

TAX CASE under Section 38 of the Tamil Nadu GST Act, 1959 to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai dated 04.8.2014 made in STA.No.36/2009 against the order dated 21.01.2009 made in Appeal No.A.P.138/2008 on the file of the Appellate Deputy Commissioner (CT) III, FAC, Chennai against the order dt.24.10.2008 made in TNGST 0460064/2001-02 on the file of the Assistant Commissioner (CT) Nungambakkam Assessment circle, Chennai against the order dated 11.6.2008 made in TNGST/0460064/01-02 on the file of Commercial Tax Officer, Nungambakkam Assessment circle against the order dated 31.05.2004 made in Commercial Tax Officer, Nungambakkam Assessment circle.

For Petitioner : Mr.V.Haribabu, AGP

Order of the Court was made by T.S.SIVAGNANAM,J

This tax case by the State is directed against the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai in STA. No.36/2009 dated 04.8.2014.

2. The above tax case is filed raising the following substantial questions of law:-

"i. Whether, on the facts and in the

circumstances of the case, the Tribunal is right in law in holding that work done by the respondent/ dealer is civil works contract liable to tax at 2% under Section 7 (c) of the Act ? And

ii. Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that dealers nature of work is civil works when they transfer the property by way of transferring the insulation to Indian Oil Corporation, which would not come under the definition of civil works contract ?"

3. The respondent is a registered dealer on the file of the Commercial Tax Officer, Nungambakkam Assessment Circle under the provisions of the Tamil Nadu General Sales Tax Act, 1959. The dealer was assessed on a total and taxable turnover of Rs.13,46,71,617/- and Rs.6,64,04,744/- respectively for the year 2001-02 vide assessment order dated 31.5.2004. Out of the above taxable turnover, a sum of Rs.4,29,03,712/- was assessed at 2% compounded rate under Section 7C of the said Act towards civil works contracts receipts.

4. After a lapse of four years, the Assessing Officer issued the revision notice dated 11.6.2008 wherein it was alleged that there was a transfer of property in insulation material in the works contract executed by the dealer for the Indian Oil corporation, which does not fall within the definition of civil works contract. The assessee submitted a reply dated 25.6.2008 stating that the contract placed on them by the Indian Oil Corporation was only a pure civil contract for construction of new petrol bunk and that there was no scope for use of insulation material in civil contracts. It was further stated that by any stretch of imagination, it could not be under insulation contracts, as there was no involvement of any insulation material in their contracts. Though such explanation was given, the Assessing Officer, in a single line, rejected the objections filed by the dealer and revised the assessment vide order dated 24.10.2008 confirming the proposal in the revision notice dated 11.6.2008.

5. Aggrieved by such order, the dealer preferred an appeal before the Appellate Deputy Commissioner (CT)-III (FAC), Chennai in A.P.No.138/2008 and it was allowed by order dated 21.1.2009. Aggrieved by the same, the State preferred an appeal before the Tribunal in STA.No.36/2009, which was dismissed by the impugned order dated 04.8.2014. Hence, the State is before this Court by way of this tax case.

6. We have heard Mr.V.Hari Babu, learned Additional Government Pleader.

7. The short issues, which fall for consideration, are as to whether the assessment could have been reopened on the allegation made against the dealer and as to whether there was any transfer of property in goods by way of transferring the insulation material while in the process of executing a civil works contract.

8. As rightly pointed out by the Appellate Authority as well as the Tribunal, the Assessing Officer did not have any material before her to revise the assessment especially when the first assessment order dated 31.5.2004 was passed after considering the entire records. We find that the revision notice dated 11.6.2008, which was issued after four years of the completion of assessment, is bereft of details and that the Assessing Officer does not state as to how she came to the conclusion that the contract involved transfer of property in insulation material. The dealer denied the allegation by stating that there was no involvement of insulation material in their contract. This explanation was not considered, but was rejected by a single line stating that the contention of the dealer was not found to be correct. Had the dealer filed a writ petition against the order dated 24.10.2008, this Court would have straight away quashed the same on the ground of non application of mind and also on the ground that the revision of assessment was devoid of reasons.

9. When the dealer carried the matter by way of appeal, the Appellate Authority found that there was nothing on the file of the Assessing Officer to show that there was insulation material involved in the execution of the civil contract. Therefore, the Appellate Authority rightly held that there was no case for reopening. Furthermore, the Appellate Authority held that the Assessing Officer revised the assessment purely based on surmises without any material evidence to prove that the receipts relate to insulation contract. Thus, it is evidently clear that the revision of assessment made by issuing the revision notice dated 11.6.2008 is a clear case of change of opinion. The Revenue preferred an appeal before the Tribunal. The Tribunal once again considered the entire factual position and held that there was absolutely no evidence on the file of the Assessing Officer to come to a conclusion that there was a transfer of right in insulation material. The Assessing Officer does not dispute the fact that the Indian Oil Corporation had awarded a contract in favour of the dealer for construction of a

petrol bunk. Thus, whatever material was utilized should be treated as a composite contract and the artificial splitting by the Assessing Officer is uncalled for. Hence, the Tribunal rightly dismissed the appeal filed by the Revenue. For the above reasons, we are of the view that no grounds have been made out to interfere with the order passed by the Tribunal.

10. In the result, the above tax case is dismissed and the substantial questions of law raised for consideration are answered in favour of the assessee and against the Revenue.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
1.The Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

2.Appellate Deputy Commissioner(CT) III,
FAC, Chennai 108.

3.Assistant Commissioner (CT), Nungambakkam Assessment Circle,
Chennai.

4.Commercial Tax Officer,
Nungambakkam Assessment Circle,
Chennai.

5.The Joint Commissioner (CT)
Chennai, Central Division,
Chennai-8

+1cc to Spl.Government Pleader SR.No.61040

GMR(CO)
sm:27.9.2018